

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**IN RE GENETICALLY MODIFIED RICE
LITIGATION**

)
) **4:06 MD 1811 CDP**
)
) **ALL CASES**
)

**JOINT REPORT OF LEAD COUNSEL
FOR APRIL 14, 2010 TELEPHONIC STATUS CONFERENCE**

Don M. Downing and Adam J. Levitt, Lead Counsel for Plaintiffs, and Terry Lueckenhoff, Lead Counsel for Defendants, hereby report to the court that they believe the following matters will be taken up at the April 14, 2010 Telephonic Status Conference:

- I. Joint Motion To Modify Certain Non-Producer Deadlines In Case Management Order 20, D.E. 2762. (Olson and Chaney).
- II. Plaintiffs' Bill of Costs from first and second bellwether trials. (Olson and Downing).
- III. Scheduling of the trial deposition of Dr. Kalaitzandonakes. The parties propose May 10, 2010, subject to the Court's availability. (Olson and Downing).
- IV. Agreed modification to Case Management Order 20 relating to liability and general damages experts in cases to be remanded.
 - A. The parties agree that the expert disclosures of liability and general damages experts in the Initial Trial Pool cases do not apply to the cases that will be remanded. Case Management Order 11 required disclosure of experts for the Initial Trial Pool and stayed all other producer cases. After discussion, the parties agree that the deadlines in Case Management Order 20 should apply to liability and general damages experts in the cases set for remand. In addition, the parties agree that deadlines for rebuttal and surrebuttal reports should be added and agree on the deadlines below for those cases covered by Case Management Order 20:
 1. Plaintiffs must disclose any rebuttal expert reports required by Federal Rule of Civil Procedure 26(a)(2) no later than **August 11, 2010**, and shall make these expert witnesses available for depositions (if appropriate under Case Management Order 17), and have depositions completed, no later than **September 1, 2010**.
 2. Defendants must disclose any surrebuttal expert reports required by Federal Rule of Civil Procedure 26(a)(2) no later than **September 8, 2010**, and shall make these expert witnesses available for depositions (if

appropriate under Case Management Order 17), and have depositions completed, no later than **September 29, 2010**.

V. Response to April 1, 2010 Order, D.E. 2722.

- A. The parties are in general agreement with the proposed order, with the exception of the distinction between general and individual experts discussed above. The parties agree that the procedure for Expert Witnesses regarding Individual Damages should be handled in the transferor districts but that the current deadlines in the Amendment to CMO 20 (D.E. 2652) should apply to general liability and damages experts, with additional deadlines established for rebuttal expert reports and surrebuttal expert reports. The parties agree with the proposal for *Daubert* motions and Summary Judgment Motions.
- B. Agreed proposed schedules and page limitations:
 - 1. Each side shall file one consolidated Summary Judgment motion and supporting memorandum and one consolidated *Daubert* motion and supporting memorandum. Summary Judgment and *Daubert* motions shall be filed by **October 7, 2010**. Oppositions shall be filed by **October 28, 2010**, and any replies filed by **November 11, 2010**.
 - 2. Memoranda in support and in opposition shall be no more than 40 pages and any reply shall be no more than 20 pages.
 - 3. Suggestions of remand may be filed by any party at any time after the summary judgment and *Daubert* motions have been ruled upon.

VI. Remaining Cases to be Tried in This District.

- A. Remaining Initial Trial Pool Cases. Set forth below is a list of the remaining initial trial pool cases and, then, each side's statement regarding the plan to try these remaining cases.
 - 1. Mississippi Cases
 - (a) Four Mississippi Initial Trial Pool cases remain:
 - (i) Brian Byrd, Judy, Byrd, Jarett Byrd, Jeremy Byrd, partners of Byrd Farms Partnership.
 - (ii) Peter H. Dulaney and Virginia V. Dulaney, partners of Peter Dulaney Farms.
 - (iii) Gary Pongetti, Pongetti Farms, Inc., EBP, Inc., partners of Pongetti Farms Partnership II.

- (iv) Phillip E. Rizzo, Phillip A. Rizzo, Paul R. Rizzo, John Michael Rizzo, Kimball Lake, Inc., Snake Creek, Inc. and Bogue, Inc., partners of Rizzo Farms Joint Venture.

2. Arkansas Cases

- (a) Eight Arkansas Initial Trial Pool cases remain:
 - (i) Frank Binkley
 - (ii) Lynn Gene, Inc., Eifling Investment Co., Sam Don, Inc., Rebecca Lynne, Inc., Clayton Lee, Inc., Don L. Eifling, Inc., and D. Lynn Eifling, Inc. as partners of Don Eifling & Son.
 - (iii) Jeffrey Keeter, Robert J. Venable and Robbin V. Tuller, partners of RJR Farms; Keeter Farms, Inc.; and P& K, Inc.
 - (iv) Dennis Brown, Sherry Brown and Coty Brown, partners of Legacy Farms Partnership (was Jays when he moved to Emerson Poynter).
 - (v) Ronald Catt.
 - (vi) Rudy Hufford and Cheryl Hufford, partners of Hufford Farms.
 - (vii) Gary Richey and Jeremy Richey, R & R Farms Joint Venture.
 - (viii) Mark Williams and Pamela G. Williams, Guy Brinkley (landlord), Aylene Williams (landlord).

3. Missouri Cases

- (a) Eight Missouri Initial Trial Pool cases remain:
 - (i) David Haggard & Judith Haggard d/b/a Haggard Farms.
 - (ii) Russ Hoggard and Russell D. Hoggard, partners of Hoggard Farms.
 - (iii) B. W. & S.W. Farms, L.L.C., B.W. & D.W. Farms, L.L.C. & D.W. & S.W. Farms, L.L.C. (Wheeler entities).
 - (iv) Kevin Cunningham, Scott E. Cunningham and Barbara K. Cunningham.

- (v) William C. Hunter & Laura Collins, partners of Willow & Company, Samuel E. Hunter as trustee of Frances M. Hunter Insurance Trust; Trustee of William P. Hunter Marital Trust; W.P. Hunter Insurance Trust, Toppertown, Inc., Samuel E. Hunter and David B. Dalton, partners of D.P.S. Enterprises.
- (vi) Peter Rost, and Paul Rost d/b/a Peter Rost Farms, Peter Rost, Jr. d/b/a Peter Rost Jr. Farms, Peter Rost and Peter Rost, Jr., partners of Rost & RostFarms.
- (vii) Johnny (Keith) Scott.
- (viii) Gordon (Lee) Wright, Christopher Lee Wright, Wright Farms of Butler Co., Inc.

4. Louisiana and Texas cases

- (a) One Louisiana Initial Trial Pool case remains (Leland Dale Vidrine, Sr. and Cynthia Faye Vidrine, d/b/a Vidrine Farm).
- (b) One Texas Initial Trial Pool case remains (John Gaulding and John M. Donaho, partners of Gaulding Farms).

B. Agreed Statement.

- 1. The parties agree on the grouping, order, and schedule of these trials.
- 2. By agreement, the remaining Louisiana trial pool case (Leland Dale Vidrine, Sr., and Cynthia Faye Lormand Vidrine, d/b/a/ Leland Vidrine Farm) will be remanded to Louisiana for trial. Mr. Vidrine filed suit originally in the Western District of Louisiana and was transferred here by the Judicial Panel on Multidistrict Litigation. Mr. Vidrine's E.D. Mo.'s Case No. is 4:07-cv-00223-CDP. The remaining Texas trial pool case (John Gaulding and John M. Donaho, partners of Gaulding Farms) will be added to the **October 2010** bellwether trial of the Texas plaintiffs.¹
- 3. The schedule and grouping of the Mississippi, Arkansas, and Missouri cases shall be as follows:

¹ Another Texas producer case, Larry Buddy DeVillier, Jr., d/b/a Larry and Buddy DeVillier through DCQ Farm, Inc. originally was part of the Initial Trial Pool but was not included as a bellwether case due to a heart attack suffered by Mr. DeVillier. The parties have agreed that this case will be remanded to the appropriate federal court in Texas for trial.

(a) Mississippi cases

- (i) These cases will be tried together in one trial which shall commence on **January 10, 2011**.
- (ii) Dispositive and *Daubert* motions are due by **October 11, 2010**. Briefs in opposition are due **November 8, 2010**, and reply briefs are due **November 29, 2010**.

(b) Arkansas cases

- (i) The first four of these cases ((i) – (iv)) will be tried together in one trial which shall commence on **May 16, 2011**.
- (ii) The remaining four cases ((v) – (viii)) will be tried together in one trial which shall commence on **July 11, 2011**.
- (iii) Dispositive and *Daubert* motions for all eight remaining Arkansas Initial Trial Pool cases are due on **December 20, 2011**. Briefs in opposition are due on **January 17, 2011**, and replies are due on **February 7, 2011**.

(c) Missouri cases

- (i) Plaintiffs shall select no later than **December 20, 2010**, four of those cases to be tried together in a trial that will commence on **November 7, 2011**.
- (ii) The remaining four Missouri Initial Trial Pool cases shall be tried together in one trial which shall commence on **January 9, 2012**.
- (iii) Dispositive and *Daubert* motions for all eight remaining Missouri Initial Trial Pool cases are due on **August 2, 2011**. Briefs in opposition are due on **August 30, 2011**, and replies are due on **September 16, 2011**.

VII. Selection of Additional Cases to be Tried in This District.

A. The parties agree on the timing and number of additional cases to be selected for trial in this district. The parties disagree on who shall select those cases.

B. Agreed deadlines:

- 1. Thirty cases shall be selected from the remaining cases to be tried in this District that are not in the Initial Trial Pool by **December 20, 2010**. Those cases will be the next cases that will be tried in this District.

2. The parties by **January 17, 2011**, shall propose a schedule leading to the first trial of these cases commencing on **March 19, 2012**.

C. Plaintiffs' position:

1. Plaintiffs believe that they should select the thirty cases for trial in this district.

D. Bayer's position:

1. Bayer believes that each side should select fifteen cases for trial in this district.

VIII. Third Group of Cases to be Remanded.

- A. No later than **August 23, 2010**, lead counsel from each side will select twenty cases from the Eastern District of Arkansas, and ten cases from each of the Western District of Louisiana and Southern District of Texas.

IX. Location of Rickmers Deposition. (Hohn and Baker).

Dated: April 8, 2010

Respectfully submitted,

/s/ Don M. Downing

Don M. Downing
GRAY, RITTER & GRAHAM, P.C.
701 Market Street, Suite 800
St. Louis, Missouri 63101

And

/s/ Adam J. Levitt

Adam J. Levitt
**WOLF HALDENSTEIN ADLER FREEMAN &
HERZ LLC**
55 West Monroe Street, Suite 1111
Chicago, Illinois 60603

LEAD COUNSEL FOR PLAINTIFFS

/s/ Eric R. Olson

Eric R. Olson
Glen E. Summers
Lester C. Houtz
John M. Hughes
**BARTLIT BECK HERMAN PALENCHAR &
SCOTT LLP**
1899 Wynkoop Street, 8th Floor
Denver, Colorado 80202

Mark E. Ferguson
Stephen Cowen
**BARTLIT BECK HERMAN PALENCHAR &
SCOTT LLP**
Courthouse Place
54 West Hubbard Street, Suite 300
Chicago, Illinois 60610

Terry Lueckenhoff, #43843
FOX GALVIN LLC
One S. Memorial Drive, 12th Floor
St. Louis, Missouri 63102

William F. Goodman, III
Joseph J. Stroble
Elizabeth M. Gates
WATKINS & EAGER
The Emporium Bldg.
400 E. Capitol Street, Suite 300
Post Office Box 650
Jackson, Mississippi 39205-0650

**ATTORNEYS FOR
THE BAYER DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Eric R. Olson